

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ERIC MCCAIN,

Petitioner,

vs.

SCOTT R. FRAKES, N.D.C.S Director,

Respondent.

8:18CV190

**MEMORANDUM
AND ORDER**

This matter is before the court on Petitioner Eric McCain's Motion for Extension ([filing no. 17](#)) and Motion for Appointment of Counsel ([filing no. 18](#)).

I. MOTION FOR EXTENSION

Petitioner has filed a motion seeking an additional 60 days in which to respond to Respondent's Answer and Brief in Support. ([Filing No. 17](#).) Upon consideration, Petitioner's motion is granted, and he shall have until February 12, 2019, to file a brief in response.

II. MOTION FOR APPOINTMENT OF COUNSEL

Petitioner also requests that counsel be appointed to represent him in these habeas proceedings. ([Filing No. 18](#).) “[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court.” *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner's ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g., Morris v. Dormire*, 217 F.3d 556, 558-59 (8th Cir. 2000), cert. denied, 531 U.S. 984 (2000); *Hoggard v. Purkett*, 29 F.3d 469, 471 (8th Cir. 1994). *See also* Rule 8(c) of

the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted).

I denied Petitioner's previous motion for appointment of counsel without prejudice to reassertion (*see filing no. 10*), and I will also deny the present motion. Again, I have carefully reviewed the record and find there is no need for the appointment of counsel at this time. Petitioner's motion is denied without prejudice to reassertion.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Extension of Time ([filing no. 17](#)) is granted. Petitioner shall have until **February 12, 2019**, to file a brief in response to Respondent's Answer and Brief in Support.
2. Petitioner's Motion for Appointment of Counsel ([filing no. 18](#)) is denied without prejudice to reassertion.
3. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **February 12, 2019**: check for Petitioner's brief in response to Respondent's answer and brief.

Dated this 14th day of December, 2018.

BY THE COURT:

s/ *Richard G. Kopf*
Senior United States District Judge